



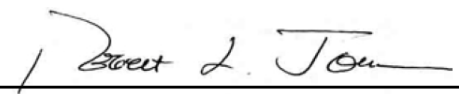
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 17, 2023


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:

Reagor-Dykes Motors, LP, et al.¹

Debtors,

Case No. 18-50214-rlj-11
Jointly Administered

Dennis Faulkner, Creditors' Trustee,

Plaintiff

vs.

Adversary No. 20-05005-rlj

Ford Motor Credit Company, LLC,

Defendant

¹ The following chapter 11 cases are jointly administered in Case No. 18-50214: Reagor-Dykes Imports, LP (Case No. 18-50215), Reagor-Dykes Amarillo, LP (Case No. 18-50216), Reagor-Dykes Auto Company, LP (Case No. 18-50217), Reagor-Dykes Plainview, LP (Case No. 18-50218), Reagor-Dykes Floydada, LP (Case No. 18-50219), Reagor-Dykes Snyder, L.P. (Case No. 18-50321), Reagor-Dykes III LLC (Case No. 18-50322), Reagor-Dykes II LLC (Case No. 18-50323), Reagor Auto Mall, Ltd. (Case No. 18-50324), and Reagor Auto Mall I LLC (Case No. 18-50325).

CERTIFICATION OF WRIT OF HABEAS CORPUS AD TESTIFICANDUM

The above-captioned adversary proceeding is presently pending before this Court and set for trial June 20 – 23, 2023, July 24 – 28, 2023, and August 1 – 3, 2023. Dennis Faulkner, Creditors’ Trustee (the “Trustee”), filed an Unopposed Request to Certify Writ of Habeas Corpus Ad Testificandum to the District Court for the Northern District of Texas, Lubbock Division, to require federal inmate Shane Andrew Smith (Federal Register: 58920-177) (“Smith”) to appear to testify at trial in this adversary proceeding. ECF No. 393.² Smith is an inmate at FCI Big Spring in Big Spring, Texas, and therefore his presence at trial cannot be secured under the ordinary process.

The District Court for the Northern District of Texas, Lubbock Division, has the discretion to issue a writ of habeas corpus ad testificandum to the Warden of FCI Big Spring. *See* 28 U.S.C. § 2241; *see also ITEL Capital Corp. v. Dennis Mining Supply & Equip., Inc.*, 651 F.2d 405, 406–07 (5th Cir. Unit B July 1981). This Court may certify the matter to the District Court with a recommendation that the writ be issued by that court. *See Bennett v. Smith (In re Smith)*, No. 05-10041, 2007 WL 1199253, at *2–3 (Bankr. M.D.N.C. April 19, 2007). The factors to consider when determining whether to issue a writ of habeas corpus ad testificandum include: (1) whether the prisoner’s presence will substantially further the resolution of the case; (2) the security risks presented by the prisoner’s presence; (3) the expense of the prisoner’s transportation and safekeeping; and (4) whether the suit can be stayed until the prisoner is released without prejudice to the cause asserted. *ITEL Capital*, 651 F.2d at 407.

This Court finds that, as applied to this matter, the factors weigh in favor of issuing a Writ of Habeas Corpus Ad Testificandum (the “Testimonial Writ”) to secure the presence of

² “ECF No.” refers to the numbered docket entry on the Court’s docket sheet in Adversary No. 20-05005.

Smith at trial. The Trustee commenced this adversary proceeding against Defendant Ford Motor Credit Company, LLC in June 2020 seeking to recover alleged fraudulent and preferential transfers. Smith has first-hand knowledge of facts relevant to the Trustee's claims, including the Debtors' operations and alleged fraudulent schemes.³ Smith's live presence provides the best opportunity for the Court to evaluate his testimony. Smith does not present a security risk; he was convicted of a non-violent crime and is confined in a minimum-security location. The facility is approximately 107 miles from the courthouse, and given the importance of Smith's testimony, the Court finds that the expense associated with travel is justified. In addition, the Court cannot stay the trial until Smith's projected release date, as doing so would unduly delay the trial in this matter that has been pending since June 2020.

This Court hereby certifies the attached Testimonial Writ to the United States District Court for the Northern District of Texas, Lubbock Division, and recommends that the Testimonial Writ be issued by the District Court requiring that the Warden of FCI Big Spring present Mr. Shane Andrew Smith before this Court in-person for trial beginning on June 20, 2023, in Courtroom No. 314, 1205 Texas Avenue, Lubbock, Texas.

End of Order

³ "Debtors" refers to the Reagor-Dykes entities that filed bankruptcy under chapter 11 of the Bankruptcy Code, *supra* note 1.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:

Reagor-Dykes Motors, LP, et al.¹

Debtors,

Case No. 18-50214-rlj-11
Jointly Administered

Dennis Faulkner, Creditors' Trustee,

Plaintiff,

vs.

Adversary No. 20-05005-rlj

Ford Motor Credit Company, LLC,

Defendant.

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

TO THE WARDEN OF FCI BIG SPRING:

The Court finds that the presence of Shane Andrew Smith (Federal Register: 58920-177) ("Smith") is necessary in order to prosecute the trial in *Dennis Faulkner, Creditors' Trustee v. Ford Motor Credit Co., LLC*, Adversary Proceeding No. 20-05005-rlj, presently pending before the United States Bankruptcy Court for the Northern District of Texas, Lubbock Division. Smith is required to appear before the United States Bankruptcy Court for the Northern District of Texas, Lubbock Division, as a witness for the trial in the above-referenced Adversary

¹ The following chapter 11 cases are jointly administered in Case No. 18-50214: Reagor-Dykes Imports, LP (Case No. 18-50215), Reagor-Dykes Amarillo, LP (Case No. 18-50216), Reagor-Dykes Auto Company, LP (Case No. 18-50217), Reagor-Dykes Plainview, LP (Case No. 18-50218), Reagor-Dykes Floydada, LP (Case No. 18-50219), Reagor-Dykes Snyder, L.P. (Case No. 18-50321), Reagor-Dykes III LLC (Case No. 18-50322), Reagor-Dykes II LLC (Case No. 18-50323), Reagor Auto Mall, Ltd. (Case No. 18-50324), and Reagor Auto Mall I LLC (Case No. 18-50325).

Proceeding on June 20, 2023, in-person at the United States Bankruptcy Court, Courtroom No. 314, 1205 Texas Avenue, Lubbock, Texas. Smith is now confined in the FCI Big Spring correctional facility located at 1900 Simler Avenue, Big Spring, Texas 79720, where he is serving a criminal sentence, and his presence in the United States Bankruptcy Court cannot be secured under the ordinary process or subpoena of the United States Bankruptcy Court for the Northern District of Texas, Lubbock Division.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED by the United States District Court for the Northern District of Texas, Lubbock Division, pursuant to powers enumerated in 28 U.S.C. § 2241(a), that Shane Andrew Smith (Federal Register: 58920-177) is a necessary witness in the trial of this adversary proceeding, and the Warden of FCI Big Spring is directed to deliver Smith to the United States Bankruptcy Court for trial of the above-captioned adversary proceeding at 9:00 a.m. on June 20, 2023, and on any other date to which the trial may be continued, in Courtroom No. 314, 1205 Texas Avenue, Lubbock, Texas, for trial before the United States Bankruptcy Court for the Northern District of Texas, Lubbock Division. The prisoner is to be under the custody and control of the United States Marshal for the Northern District of Texas for the duration of time necessary for him to testify at the trial in this matter. It is further ordered that once Smith has testified and been released by the United States Bankruptcy Court for the Northern District of Texas, Lubbock Division, he shall remain in the custody of the U.S. Marshal for the Northern District of Texas, and Smith shall be returned to the custody of FCI Big Spring, subject to further orders of this Court.

SO ORDERED this ____ day of March, 2023.

SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE